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UNITED STATES OF AMERICA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TWITTER, INC., a corporation,

Defendant.

Case No. 3:22-cv-3070-TSH

**UNITED STATES' CIVIL LOCAL
RULE 79-5(F) MOTION TO
CONSIDER WHETHER OTHER
PARTIES' MATERIAL SHOULD BE
SEALED**

Case No. 3:22-cv-3070-TSH

UNITED STATES' CIVIL LOCAL RULE 79-5(F) MOTION TO CONSIDER
WHETHER OTHER PARTIES' MATERIAL SHOULD BE SEALED

The United States has filed Exhibits A-H in support of its Opposition to X Corp.’s Motion for Protective Order and Relief from Consent Order (“Opposition”). *See* ECF Nos. 41, 42. These exhibits contain information that the Federal Trade Commission (“FTC”) obtained from Defendant X Corp. (formerly Twitter, Inc.), and Ernst & Young, LLP (“EY”), during the course of the FTC’s non-public investigation regarding X Corp.’s compliance with the FTC’s 2022 Administrative Order. Exhibit G was designated as confidential by X Corp., and Exhibit H was designated as confidential by EY, pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2. Moreover, the depositions identified in exhibits C, D, E, and F refer to those documents, and the United States’ Opposition contains discussion of those documents.

Before filing this motion, the government contacted counsel for X Corp. and EY to inform them of the government’s intention to file certain materials that contain information designated as confidential by X Corp. or EY, and counsel for X Corp. advised that the deposition transcripts at issue contain information that the company may consider confidential. However, the voluminous nature of the materials and the imminent filing deadline rendered it impracticable for the parties to develop a position on the confidentiality of these materials before the filing. The government is therefore filing this motion to provide X Corp. and EY an opportunity to file, within seven days, a statement or declaration pursuant to Civil Local Rule 79-5(f)(3) regarding whether and why the above-referenced materials, or specific portions thereof, should be filed under seal.

Accordingly, pursuant to Civil Local Rule 79-5(f), the United States files this administrative motion to consider whether the documents identified below should be sealed:

Exhibit	Document Title	Portion Of Document To Be Provisionally Sealed
Not applicable	United States’ Opposition to X Corp.’s Motion for Protective Order and Relief from Consent Order	Highlighted in Yellow
Exhibit C	Excerpts from the Deposition of Seth Wilson	Entire Document
Exhibit D	Excerpts from the Deposition of Andrew Saylor	Entire Document

Exhibit E	Excerpts from the Deposition of Damien Kieran	Entire Document
Exhibit F	Excerpts from the Deposition of Lea Kissner	Entire Document
Exhibit G	Exhibit 001 to the deposition of Lea Kissner	Entire Document
Exhibit H	Exhibit 011 to the Deposition of David Roque	Entire Document

Should X Corp. or EY file a statement or declaration pursuant to Civil Local Rule 79-5(f)(3), the United States reserves its right to file a response pursuant to Civil Local Rule 79-5(f)(4). Consistent with Civil Local Rule 79-5(d), unredacted versions of the above documents accompany this administrative motion.

Dated: September 11, 2023

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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CERTIFICATE OF SERVICE

Consistent with Civil Local Rule 5-5 and 79-5(f)(2), I certify that on September 11, 2023, a copy of the foregoing motion will be electronically served on Laura Riposo VanDruff, counsel for Ernst & Young, LLP, at LVanDruff@KelleyDrye.com.

September 11, 2023

/s/ Scott P. Kennedy

SCOTT P. KENNEDY